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November 4, 2016

VIA ECF

The Honorable Mark Falk, U.S.M.J.
United States District Court
For the District of New Jersey
Martin Luther King Building & U.S. Courthouse
50 Walnut Street
Newark, NJ 07101

Re: Strikeforce Technologies, Inc. v. Duo Security Incorporated
Civil Action No. 2:16-cv-03571-JMV-MF

Strikeforce Technologies, Inc. v. Trustwave Holdings, Inc.
Civil Action No. 2:16-cv-03573-JMV-MF

Strikeforce Technologies, Inc. v. Centrifry Corporation
Civil Action No. 2:16-cv-03574-JMV-MF

Dear Judge Falk:

Blank Rome LLP represents Plaintiff Strikeforce Technologies, Inc. in the above matters. With the consent of Defendants' counsel, I enclose an agreed upon Proposed Consolidated Discovery Plan. If this is acceptable, we respectfully request that it be signed by the Court and entered on the docket.

Thank you for Your Honor's courtesies.

Respectfully submitted,

/s/ *Seth J. Lapidow*

SETH J. LAPIDOW

SJL/jln

Enclosure

cc: All Counsel of Record (via ECF)

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

STRIKEFORCE TECHNOLOGIES, INC.,

Plaintiff,

v.

DUO SECURITY INCORPORATED,

Defendant.

Civil Action No. 2:16-cv-03571-JMV-MF

Electronically Filed

Jury Trial Demanded

STRIKEFORCE TECHNOLOGIES, INC.,

Plaintiff,

v.

TRUSTWAVE HOLDINGS, INC.,

Defendant.

Civil Action No. 2:16-cv-03573-JMV-MF

Electronically Filed

**PROPOSED CONSOLIDATED
DISCOVERY PLAN**

Jury Trial Demanded

STRIKEFORCE TECHNOLOGIES, INC.,

Plaintiff,

v.

CENTRIFY CORPORATION,

Defendant.

Civil Action No. 2:16-cv-03574-JMV-MF

Electronically Filed

Jury Trial Demanded

These matters having come before the Court during an initial conference on November 9, 2016, pursuant to Fed. R. Civ. P. 16; Seth J. Lapidow, Esq., Nicholas R. Tambone, Esq., Charles R. Wolfe, Jr., Esq., and Ameya V. Paradkar, Esq. of BLANK ROME LLP, counsel for Plaintiff StrikeForce Technologies, Inc. (“StrikeForce” or “Plaintiff”); and John E. Flaherty, Esq. and Ravin R. Patel, Esq. of MCCARTER & ENGLISH, LLP and John D. Garretson, Esq., Scott M. Wadding, Esq., and William J. Harmon, Esq. of SHOOK, HARDY & BACON LLP, counsel for Defendant Duo Security, Inc. (“Duo”); Eric I. Abraham, Esq. and Christina L. Saveriano, Esq. of HILL WALLACK LLP and Jeffrey Gargano, Esq. and Brian Jones, Esq. of MCDERMOTT WILL & EMERY LLP, counsel for Defendant Trustwave Holdings, Inc. (“Trustwave”); and Tyler E. Baker, Esq., Edward V. Anderson, Esq., and Deepali Brahmabhatt, Esq. of SHEPPARD MULLIN RICHTER & HAMPTON, LLP, counsel for Defendant Centrifify Corporation (“Centrifify”) appearing (collectively, “Defendants”); and good cause having been shown;

IT IS on this day of November, 2016,

1. **ORDERED THAT** pursuant to the Local Patent Rules of the New Jersey District Court, L. Civ. R. 9.3, as modified herein, the following schedule shall apply to these matters which arise under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*:
 - (a) By **November 23, 2016**, Plaintiffs shall provide Defendants with a “Disclosure of Asserted Claims and Infringement Contentions” pursuant to L. Pat. R. 3.1(a-h). Any “Infringement Contentions” disclosed shall be accompanied by the production of documents required pursuant to L. Pat. R. 3.2(a-g).
 - (b) By **December 9, 2016**, if not already presented, the parties shall present a consent discovery confidentiality order, supported by a sufficient certification under L. Civ. R. 5.3(b)(2), or in the absence of consent, a party shall, supported by a sufficient certification, apply for entry of a discovery confidentiality order under L. Civ. R. 5.3(b)(5) and L. Civ. R. 37.1(a)(1).
 - (c) By **January 17, 2017**, Defendants shall provide to Plaintiffs their “Non-infringement Contentions and Responses” to Infringement Contentions pursuant to L. Pat. R. 3.2A(a-c).
 - (d) By **January 17, 2017**, Defendants shall provide Plaintiffs with their “Invalidity Contentions” pursuant to L. Pat. R. 3.3(a-d). Any “Invalidity Contentions” disclosed shall be accompanied by the production of documents required pursuant to L. Pat. R. 3.4(a-d).
 - (e) By **January 31, 2017**, Plaintiffs shall provide to Defendants their “Responses to Invalidity Contentions” pursuant to L. Pat. R. 3.4A(a-d).
2. Exchange of Proposed Terms for Construction, Preliminary Claim Constructions and Extrinsic Evidence:
 - (a) By **February 6, 2017**, each party shall exchange proposed claim terms for construction pursuant to L. Pat. R. 4.1(a). After the exchange of proposed claim terms for construction, the parties will select a mutually agreeable date to meet

and confer for the purposes of limiting the terms in dispute by narrowing or resolving differences and facilitating the ultimate preparation of a Joint Claim Construction and Prehearing Statement pursuant to L. Pat. R. 4.1(b).

- (b) By **February 27, 2017**, the parties shall simultaneously exchange preliminary proposed constructions of each term identified by any party for construction pursuant to L. Pat. R. 4.2(a) ("Preliminary Claim Constructions"). At the same time the parties exchange their respective "Preliminary Claim Constructions," each party shall also identify all intrinsic evidence, references from the specification or prosecution history that support their preliminary proposed construction and designate any supporting extrinsic evidence including, without limitation, dictionary definitions, citations to learned treatises and prior art and testimony of all witnesses including expert witnesses. Extrinsic evidence shall be identified by production number or by producing a copy if not previously produced. With respect to all witnesses including experts, the identifying party shall also provide a description of the substance of that witness' proposed testimony that includes a listing of any opinions to be rendered in connection with claim construction pursuant to L. Pat. R. 4.2(b).
- (c) By **March 13, 2017**, the parties shall exchange an identification of all intrinsic evidence and extrinsic evidence that each party intends to rely upon to oppose any other party's proposed construction pursuant to L. Pat. R. 4.2(c). After the exchange of intrinsic and extrinsic evidence, the parties will select a mutually agreeable date to meet and confer for the purposes of narrowing the issues and finalizing preparation of a Joint Claim Construction and Prehearing Statement pursuant to L. Pat. R. 4.2(d).

3. Joint Claim Construction and Prehearing Statement:

- (a) By **March 29, 2017**, the parties shall complete and file a consolidated Joint Claim Construction and Prehearing Statement pursuant to L. Pat. R. 4.3(a-f) with the parties for all related cases, *StrikeForce Technologies, Inc. v. Duo Security Inc.*, C. A. No. 2:16-cv-03571-JMV-MF, *StrikeForce Technologies, Inc. v. Trustwave Holdings, Inc.*, C. A. No. 2:16-cv-03573-JMV-MF, and *StrikeForce Technologies, Inc. v. Centrifify Corporation*, C. A. No. 2:16-cv-03574-JMV-MF.

4. Completion of Claim Construction Discovery:

- (a) By **April 28, 2017**, the parties shall complete all discovery relating to claim construction, including any depositions with respect to claim construction of any witnesses, other than experts, identified in the Preliminary Claim Construction statement or Joint Claim Construction and Prehearing Statement pursuant to L. Pat. R. 4.4.

5. Claim Construction Submissions:

- (a) By **May 15, 2017**, the parties shall file and serve their opening *Markman* briefs and any evidence supporting claim construction, including experts' certifications

or declarations (“Opening *Markman* Submissions”) pursuant to L. Pat. R. 4.5(a). Any discovery from an expert witness who submitted a certification or declaration under L. Pat. R. 4.5(a) shall be conducted within 30 days after filing the Opening *Markman* Submissions pursuant to L. Pat. R. 4.5(b).

- (b) By **June 14, 2017**, unless otherwise ordered by the Court, any discovery from an expert witness who submitted a certification or declaration shall be concluded pursuant to L. Pat. R. 4.5(b).
 - (c) By **July 14, 2017**, the parties shall contemporaneously file and serve responding *Markman* briefs and any evidence supporting claim construction, including any responding experts' certifications or declarations pursuant to L. Pat. R. 4.5(c).
- 6. Markman Hearing: By **July 28, 2017**, the parties shall confer and propose to the Court a schedule for a Claim Construction Hearing, to the extent the parties or the Court believe a hearing is necessary for construction of the claims at issue pursuant to L. Pat. R. 4.6. The Court will schedule one consolidated Claim Construction Hearing for all related cases: *StrikeForce Technologies, Inc. v. Duo Security Inc.*, C. A. No. 2:16-cv-03571-JMV-MF, *StrikeForce Technologies, Inc. v. Trustwave Holdings, Inc.*, C. A. No. 2:16-cv-03573-JMV-MF, and *StrikeForce Technologies, Inc. v. Centrifify Corporation*, C. A. No. 2:16-cv-03574-JMV-MF.
 - 7. By thirty (30) days after the entry of the Court’s Claim Construction Order, any parties, relying on the advice of counsel shall produce opinion and related documents.
 - 8. Plaintiffs anticipate needing discovery on the issues raised by the Complaint and Answer including, without limitation, discovery relating to Defendants’ infringement of the patent in suit, Defendants’ research and development leading to the accused products, Defendants’ marketing and sales of the accused products and Defendants’ affirmative defenses. Defendants anticipate needing discovery relating to Plaintiffs’ infringement allegations, the research and development leading to the alleged invention in the asserted patent, the drafting and prosecution of the asserted patent, the invalidity of the asserted patent, and issues raised by Defendants’ affirmative defenses. Counsel will confer in an attempt to resolve any discovery or case management disputes before making such dispute the subject of a motion. No discovery motion will be entertained absent counsel’s full compliance with L. Civ. R. 37.1(a)(1); *see also* L. Civ. R. 16.1(f).
 - 9. The parties have not yet exchanged initial disclosures, but intend to do so pursuant to Fed. R. Civ. P. 26(a) no later than **November 23, 2016**. The parties have not yet commenced formal discovery.
 - (a) Discovery Disputes: The parties do not have any discovery problems at this time. However, at least ten (10) days prior to the next scheduled conference, the parties shall send the Court a letter identifying all discovery disputes. No issue will be addressed unless the letter is accompanied by an Affidavit that complies with L. Civ. R. 37.1(b)(1). Responses shall be served three (3) days prior to the next

scheduled conference. All outstanding discovery issues not raised shall be deemed waived.

- (b) Depositions: The parties intend to videotape depositions. The parties agree that they will make their respective current employees available for deposition upon the notice of any particular employee, without the need for subpoena or other formal process, subject to appropriate and applicable objections. The parties further agree that they will use best efforts to agree to mutually convenient dates and locations for depositions noticed by either side and will coordinate with the parties in all related pending cases, *StrikeForce Technologies, Inc. v. Duo Security Inc.*, C. A. No. 2:16-cv-03571-JMV-MF, *StrikeForce Technologies, Inc. v. Trustwave Holdings, Inc.*, C. A. No. 2:16-cv-03573-JMV-MF, and *StrikeForce Technologies, Inc. v. Centrifify Corporation*, C. A. No. 2:16-cv-03574-JMV-MF, so that the depositions of witnesses common to all three cases will be conducted once, with all parties participating. In accordance with Fed. R. Civ. P. 30, the parties shall be limited to ten (10) fact depositions including Rule 30(b)(6) depositions (party and non-party) per side, limited to seven (7) hours per witness. If necessary, the parties may agree to increase the time limit for depositions.
 - (c) Interrogatories: In accordance with Fed. R. Civ. P. 33, the parties shall be limited to twenty-five (25) interrogatories (including all subparts) per party, except upon leave of Court.
 - (d) Requests for Admissions: The parties shall be limited to forty (40) requests for admissions (including subparts) that do not relate to the authenticity of documents, except upon leave of Court. The number of requests for admission of the authenticity of documents is not limited except as justice requires to protect the responding party from annoyance, oppression, or undue burden and expense.
 - (e) Electronic Discovery: Both parties plan to seek discovery of computer-based and other digital information. The parties intend to propose an electronic discovery plan for the Court's approval shortly.
10. Deadline to Amend Pleadings: Any party may file a motion to amend pleadings or add parties by **January 24, 2017**.
 11. Completion of Fact Discovery: The parties shall complete all fact discovery in this case no later than forty-five (45) days after the Court's Claim Construction Order.
 12. Expert Reports:
 - (a) Initial Expert Reports: The parties shall serve any affirmative expert reports concerning issues on which the parties have the burden of proof no later than forty-five (45) days after the Court's Claim Construction Order.
 - (b) Reply Expert Reports: The parties shall serve any expert reports in response to the Initial Expert Reports no later than seventy-five (75) days after the Court's Claim Construction Order.

- (c) Rebuttal Expert Reports: Any expert reports in response to the Reply Expert Reports shall be due no later than ninety (90) days after the Court's Claim Construction Order.
13. Completion of Expert Discovery: The parties shall complete all expert discovery no later than one hundred and twenty (120) days after the Court's Claim Construction Order.
14. Dispositive Motions: All dispositive motions shall be filed no later than one hundred and fifty (150) days after the Court's Claim Construction Order.
- Any responses to such dispositive motions shall be due no later than one hundred and seventy-five (175) days after the Court's Claim Construction Order.
- Any replies in support of such dispositive motions shall be due no later than two hundred (200) days after the Court's Claim Construction Order.
15. Pre-Trial Conference Date: A Pre-Trial Conference shall be held on **[To be scheduled by Court]**.

PROPOSED JOINT DISCOVERY PLAN

Event	Proposed Date
Parties Serve Initial Disclosures	November 23, 2016
Plaintiff Serves Disclosure of Asserted Claims and Infringement Contentions” pursuant to L. Pat. R. 3.1(a-h)	November 23, 2016
Parties Present Consent Discovery Confidentiality Order (if necessary)	December 9, 2016
Defendants Serve Non-infringement Contentions and Responses Pursuant to L. Pat. R. 3.2A(a-c)	January 17, 2017
Defendants Serve Invalidity Contentions Pursuant to L. Pat. R. 3.3(a-d)	January 17, 2017
Deadline to Amend Pleadings	January 24, 2017
Plaintiff Serves Responses to Invalidity Contentions Pursuant to L. Pat. R. 3.4A(a-d)	January 31, 2017
Parties Exchange Proposed Claim Terms for Construction Pursuant to L. Pat. R. 4.1(a)	February 6, 2017
Parties Exchange Preliminary Claim Constructions Pursuant to L. Pat. R. 4.2(a)	February 27, 2017

Event	Proposed Date
Parties Exchange Claim Construction Disclosures Pursuant to L. Pat. R. 4.2(c)	March 13, 2017
Joint Claim Construction and Prehearing Statement Pursuant to L. Pat. R. 4.3(a-f)	March 29, 2017
Completion of Claim Construction Discovery Pursuant to L. Pat. R. 4.4	April 28, 2017
Opening <i>Markman</i> Briefs and Supporting Evidence Including Expert Declarations	May 15, 2017
Completion of <i>Markman</i> Expert Discovery Pursuant to L. Pat. R. 4.5(b)	June 14, 2017
Responsive <i>Markman</i> Briefs and Supporting Evidence Including Expert Declarations	July 14, 2017
Parties Meet and Confer to Propose Date for <i>Markman</i> Hearing	July 28, 2017
Completion of Fact Discovery	Forty-five (45) days after Claim Construction Order
Initial Expert Reports on Issues the Party Bears the Burden of Proof	Forty-five (45) days after Claim Construction Order
Reply Expert Reports in Response	Seventy-five (75) days after Claim Construction Order

Event	Proposed Date
to Initial Expert Reports	
Rebuttal Expert Reports in Response to Reply Expert Reports	Ninety (90) days after Claim Construction Order
Completion of Expert Discovery	One hundred and twenty (120) days after Claim Construction Order
All Dispositive Motions Filed	One hundred and fifty (150) days after Claim Construction Order
Responses to Dispositive Motions	One hundred and seventy-five (175) days after Claim Construction Order
Reply in Support of Dispositive Motions	Two hundred (200) days after Claim Construction Order
Pre-Trial Conference	TBD By Court

STIPULATED TO BY THE PARTIES:

s/ Seth J. Lapidow

s/ John E. Flaherty

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IT IS SO ORDERED:

Date: _____

UNITED STATES DISTRICT JUDGE